

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

In re T.C., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

T.C.,

Defendant and Appellant.

A125277

(Alameda County
Super. Ct. No. SJ09012184)

Following a contested jurisdiction hearing, the juvenile court sustained an allegation that appellant T.C., then 12 years old, committed felony robbery. The court adjudged T.C. a ward of the court, placed him on probation, and ordered him to complete 40 hours of community service and pay a \$100 restitution fine. On appeal, T.C. contends that there was insufficient evidence identifying him as the perpetrator of the crime. We disagree and, accordingly, affirm.

EVIDENCE AT THE CONTESTED JURISDICTION HEARING

On March 20, 2009, shortly after 5:00 p.m., 14-year-old Katelin H. was walking home after drama class, talking to her mother on her cell phone as she walked. A group of six or seven Black males, some of whom looked older and some of whom looked younger than Katelin, were approaching from the opposite direction. Two of the boys were on a bicycle, with one steering and the other standing on pegs attached to the rear

wheel. The rest of the boys were walking. Katelin testified that she was afraid because it was “a big group of guys,” and she “knew there was going to be a problem.”

As the group passed by, the boy standing on the bicycle pegs reached out and grabbed at Katelin’s cell phone. Katelin pulled back on her phone and got it away from him.

When the boys were past her, Katelin noticed that her purse was missing from her shoulder and saw one of the boys running off with it in his hands. Katelin chased him for about 15 or 20 feet and when she caught up with him, he dropped her purse.¹ As she bent down to pick it up, he punched her in the face. The boy then ran off and caught up with the rest of the boys, who laughed as they headed off in the direction of John Muir Middle School. At some point during the incident, Katelin yelled “Fuck you” at one of the attackers, although she denied kicking or punching anyone, or calling anyone a “bitch.” Katelin was on the phone with her mother during the entire incident, and immediately hung up and called the police.

The police arrived a minute or two later. Katelin related what happened, describing the boy standing on the bicycle as Black, 11 to 13 years old, and wearing a green shirt and blue jeans. She described the boy who took her purse and punched her in the face as Black, 10 to 12 years old, and wearing a red jacket and blue jeans. At the jurisdiction hearing, Katelin testified that the shirt of the boy on the bicycle was actually green with white sleeves, having just remembered seeing a white sleeve when he reached for her cell phone. And, she testified, the second assailant’s red jacket was a cotton, zip-up jacket with gold writing on it in “a graffiti kind of design.” She testified that she had told the police there was gold writing on it, but did not describe the writing because they did not ask.

¹ In one of many attempts to portray Katelin’s testimony as riddled with inconsistencies, T.C. argues that Katelin “conceded that in her statement to the police, she had said that he only ran five feet with it.” In her statement, she actually stated, “I chased the kid and got about five feet from him.” We do not understand her hearing testimony to be inconsistent with this statement. In one instance, she is describing how far she chased the perpetrator, in the other how close she came to him.

Somewhere between twenty minutes to an hour after the incident, the police drove Katelin to John Muir Middle School, where six or seven boys were sitting in a row on a wall. A bicycle identical to the one ridden by two of the assailants was resting nearby. Katelin remained in the back of the police car, approximately 40 to 50 feet away. The police had each of the boys stand up one at a time. Taking note of their clothes, Katelin identified T.C., who was wearing the same red jacket as the assailant, as the boy who took her purse, and T.C.'s friend Thomas H., who was wearing the same green shirt as the assailant, as the boy who grabbed her phone. By this point, Katelin was tired and scared, and wanted to go home.²

At the jurisdiction hearing, Katelin acknowledged that she had not seen the faces of the assailants during the incident. She had seen T.C. once at school after the incident when he walked up to her and said, "Why'd you get me in jail?" She recognized him as the assailant in the red jacket. When asked at the hearing, however, whether she could identify either of the perpetrators, she was unable to do so. She also testified that she would not recognize the boy in the red jacket if she saw him again.

Katelin's mother, Michelle S., corroborated Katelin's version of the incident. According to her testimony, shortly after 5:00 p.m. on March 20, 2009, she was on the telephone with Katelin, who was walking home from her after-school drama class. As they were talking about how Katelin's drama rehearsal went, Michelle suddenly heard Katelin say, "No," and then heard a scratching sound. Katelin then said, "Don't," followed by more scratching, a short silence, and then, "Mine." Katelin then yelled "Fuck you" and when she came back on the line, said, "Mom, guess what just happened. He hit me."

T.C. testified in his own defense. According to his testimony, he was walking down the street toward John Muir Middle School with a group of boys. A boy named

² T.C. claims that at the hearing, Katelin "admitted that she was tired and in a hurry when she identified" him. In fact, nowhere did Katelin testify that she was in a hurry. Katelin answered affirmatively when asked by T.C.'s counsel, "So I assume you were just tired and scared and wanted to go home?" but she never mentioned being in a rush.

Hiram was riding a bicycle, and another boy named Thomas was on the back of the bicycle. T.C. and his friend Ellis W. were walking far behind the bicycle, and there were other boys in between. As they walked, T.C. and Ellis were playing around, “like hitting each other a little bit, walking down the street.” As they passed a girl who was walking toward them, Ellis pushed T.C., causing him to bump into her. She called him an “ ‘A’ hole” and then kicked him in the leg. After bumping into her, T.C. just kept walking forward with Ellis. He never saw a purse, and at no point did he try to take the girl’s purse or cell phone.

T.C. also testified that he did not see anything happen among Hiram, Thomas, and Katelin because he had his head down when he was walking, and never even saw the bicycle pass by Katelin. In contradiction to his testimony, however, T.C. told the police that he thought Thomas had grabbed Katelin’s backpack and that it slipped out of his hand. At the hearing, he attempted to explain this inconsistency by claiming that he was just guessing when he told the police that Thomas had grabbed Katelin’s backpack. He then claimed that he thought he saw Thomas grab something, and then further elaborated that when he was walking, he put his head down and when he looked back up, he saw Thomas’s hand near Katelin so he thought he saw Thomas grab Katelin’s backpack but did “not really” see Thomas’s hand physically touch Katelin or go near her shoulder. T.C. denied that Thomas had told him earlier in the day that he was going to rob someone, claiming it was Hiram that planned to do so.

T.C. testified that at the time of the incident he was wearing a red shirt that said “hot rod” on it, and he was still wearing it when Katelin identified him as the assailant. He described Thomas’s top as a “greenish jacket.”

T.C.’s mother, Lakisha N.-C., testified at the hearing, relating what T.C. told her about the incident. According to T.C., he and some friends were walking down the street, while Thomas was riding on the back of a bicycle. The driver of the bicycle told Thomas to take something from a girl they were passing on the street, but he refused to do so. The bicycle then stopped, “Thomas got pushed into the bike, fell over or something,” and in the midst of it all, T.C. was pushed into the girl.

Thomas also testified in his own defense. According to Thomas, after school, he met up with T.C. and some other friends to go play basketball at John Muir Middle School. His friend Hiram was riding his bicycle, and Thomas was standing on the rear pegs. They were a little bit ahead of the rest of the group, and as they passed a girl on the sidewalk, the bicycle swerved close to her and Thomas touched her on the shoulder. It happened, he claimed, because Hiram told him to take the cell phone that was in her hand and then wiggled the bike, causing Thomas to nearly fall. Thomas denied that he reached for, touched, or took the girl's cell phone, or that he even intended to take it, claiming that he only touched her shoulder because he was about to fall. They then continued riding the bicycle to the front of the school. He did not see T.C. touch Katelin, and in fact did not see T.C. at all until he, Thomas, was at the school ground and had gotten off the bicycle.

Thomas's mother, LaNeshia D., testified at the jurisdiction hearing as to what Thomas told her about the incident. Thomas told her he was riding on the pegs on the back of a bicycle while a friend was steering. His friend told him to take a girl's phone but Thomas refused so his friend began pedaling faster and faster toward the girl. As they got close to her, his friend suddenly braked, causing Thomas to fly off the bicycle and hit her on the arm. Someone else in the group then pushed T.C. into the girl as well.

A third boy who was there that day—T.C.'s friend Ellis—also testified. According to Ellis, he and T.C. were walking with a group of approximately 10 to 12 boys to John Muir Middle School. A boy named Hiram was riding a bicycle, and Thomas was on the back. As they were walking, Ellis saw a girl with a purse over her shoulder walking toward them. Hiram rode the bike near the girl, and it looked as if Thomas briefly tapped her on the shoulder. At the same time, T.C. and Ellis were fooling around, and Ellis pushed T.C., causing him to accidentally bump into the girl with his shoulder. Ellis walked away at that point and never saw anyone take the girl's belongings, nor did he see any of her belongings fall to the ground. Ellis testified that he had his eyes on T.C. during the entire incident, and that T.C. did not take a purse or cell

phone from the girl. He confirmed that T.C. was wearing a red shirt and Thomas a green sweater.

DISCUSSION

T.C. presents one argument on appeal: that there was insufficient evidence of his identification as the assailant who took Katelin’s purse and punched her in the face. On an “appeal challenging the sufficiency of the evidence to support a juvenile court judgment sustaining the criminal allegations of a petition made under the provisions of [Welfare and Institutions Code] section 602 . . . [the reviewing court] must apply the same standard of review applicable to any claim by a criminal defendant challenging the sufficiency of the evidence to support a judgment of conviction on appeal.” (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1371.) In reviewing the sufficiency of the evidence, we apply the substantial evidence test, under which we must “review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence which is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980) 26 Cal.3d 557, 578; *People v. Cuevas* (1995) 12 Cal.4th 252, 260-261 (*Cuevas*); *People v. Thomas* (2005) 133 Cal.App.4th 488, 490; *In re Andrew I.* (1991) 230 Cal.App.3d 572, 577; *In re Oscar R.* (1984) 161 Cal.App.3d 770, 773; *In re Roderick P.* (1972) 7 Cal.3d 801, 808-809.) Reversal on the ground of insufficient evidence is unwarranted unless “ ‘upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ ” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

The identity of the perpetrator of a crime is a question for the trier of fact (see *People v. Rich* (1960) 177 Cal.App.2d 617, 625), in this case the juvenile court judge, who accepted Katelin’s identification of T.C. as the perpetrator who took her purse and punched her. T.C. challenges the identification as insufficiently reliable to support the court’s finding and, most significantly, argues that at the jurisdiction hearing, Katelin was unable to identify him as one of the perpetrators, despite her prior out-of-court identification. We are not persuaded.

In *Cuevas, supra*, 12 Cal.4th 252, 263, the California Supreme Court rejected a rule it had adopted in *People v. Gould* (1960) 54 Cal.2d 621, 631, that an out-of-court identification of a defendant that the identifying witness cannot or will not confirm at trial is not sufficient to sustain a conviction. Instead, it held that a court should apply the substantial evidence test to determine whether an out-of-court identification is sufficient. (*Cuevas, supra*, 12 Cal.4th at p. 272.) Doing so, the court identified four circumstances that may bear upon the probative value of a pretrial identification: “(1) the identifying witness’s prior familiarity with the defendant; (2) the witness’s opportunity to observe the perpetrator during the commission of the crime; (3) whether the witness has a motive to falsely implicate the defendant; and (4) the level of detail given by the witness in the out-of-court identification and any accompanying description of the crime.” (*Id.* at p. 267.) Applying the holding of *Cuevas* and viewing the record in the light most favorable to the judgment, we conclude that Katelin’s identification of T.C. as the perpetrator is reasonable, credible, and of solid value such that a reasonable trier of fact could find beyond a reasonable doubt that T.C. committed the crime.

Katelin testified that the police arrived one or two minutes after she called 911. The incident was thus very fresh in her mind when she described her assailants to the police. She described the assailant on the bicycle as wearing a green shirt and blue jeans and the assailant who took her purse and punched her in the face as wearing a red jacket and blue jeans. Within 20 minutes to an hour later, Katelin identified T.C. and Thomas as her assailants because they were wearing the same clothes as the boys who assaulted her. Katelin had no motive to falsely implicate T.C. since she had no contact with him prior to the robbery, and she had nothing to gain by falsely identifying him to the police.

Further, Katelin’s prior identification was “corroborated by other evidence linking the defendant to the crime.” (*Cuevas, supra*, 12 Cal.4th at p. 272.) T.C. was with a group of boys, one of whom discussed robbing someone before they encountered Katelin and then told Thomas to take her cell phone as they rode past her. T.C. and Thomas both admitted coming into physical contact with Katelin, although they claimed it was accidental. And significantly, T.C. and Ellis confirmed that T.C. was wearing a red top

and Thomas a green one, which was consistent with Katelin's description. In light of the foregoing evidence, the juvenile court could reasonably have relied on Katelin's pre-trial identification of T.C. And that was enough, as it is well settled that the testimony of a single witness, if believed by the finder of fact, is sufficient to support a conviction. (See Evid. Code, § 411 ["[e]xcept where additional evidence is required by statute, the direct evidence of one witness who is entitled to full credit is sufficient for proof of any fact"; *People v. Young* (2005) 34 Cal.4th 1149, 1181 ["unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a conviction"]; *People v. Boyer* (2006) 38 Cal.4th 412, 480 ["[i]dentification of the defendant by a single eyewitness may be sufficient to prove the defendant's identity as the perpetrator of a crime"].)

T.C. also challenges the reliability of Katelin's identification because she did not see T.C.'s face, instead identifying him by the clothing he was wearing. However, a witness can make a competent identification without ever seeing the perpetrator's face and may rely on other factors such as clothing. Indeed, as explained in *People v. Lindsay* (1964) 227 Cal.App.2d 482, 494: "Our courts have held that it is not necessary that any of the witnesses called to identify the accused should have seen his face. [Citation.] Identification based on other peculiarities may be reasonably sure. Consequently, the identity of a defendant may be established by proof of any peculiarities of size, appearance, similarity of voice, features or clothing." Here, Katelin described the clothing T.C. was wearing with reasonable accuracy, and also identified his ethnicity and approximate age.

T.C. also attempts to make much of the fact that there were discrepancies in the assailants' clothing as Katelin described them to the police, as she described them in court, and as other witnesses described them in court. Specifically, she told the police that the boy who took her purse and punched her in the face was wearing a red jacket. At the hearing, she described it as a red jacket with gold, graffiti-like writing on it. And T.C. and Ellis testified that T.C. was wearing a red shirt, rather than a jacket. Given T.C.'s admission that he bumped into Katelin and was thus clearly involved in the conflict, the

significant question for the court was whether he then took her purse, as Katelin claimed, or continued walking without further incident, as he claimed. Because the precise nature of the red top he was wearing had no bearing on this question, it would not have been unreasonable for the juvenile court to dismiss the minor inconsistencies in the descriptions of his clothing.

In sum, the defense introduced evidence disputing T.C.'s identity as one of the robbers, vigorously explored the circumstances of Katelin's out-of-court identification, and elicited testimony during cross-examination seeking to disprove T.C.'s identity as one of the robbers. And in closing argument, T.C.'s counsel argued at length about the reliability of Katelin's testimony and discrepancies in the evidence. Despite all this, the juvenile court found Katelin's identification of T.C. as the assailant to be credible, clearly giving more weight to it than to the self-serving testimony of T.C., Thomas, and Ellis. In light of this, T.C.'s arguments simply amount to a request that we reweigh the credibility of the witnesses' testimony and resolve the conflicts in his favor. This we cannot do. (*People v. Young, supra*, 34 Cal.4th at p. 1181 ["In deciding the sufficiency of the evidence, a reviewing court resolves neither credibility issues nor evidentiary conflicts. [Citation.] Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact."].) To the extent there were weaknesses in Katelin's identification of T.C., the weight to be given her testimony was for the juvenile court to decide.

DISPOSITION

The sustained finding of felony robbery is affirmed.

Richman, J.

We concur:

Haerle, Acting P.J.

Lambden, J.